SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Lowenthal | Analyst: Kristina E. North | Bill Number: AB 1903

Related Bills: See Prior Analysis | Telephone: 845-6978 | Amended Date: August 7, 2000

Attorney: Patrick Kusiak | Sponsor:

SUBJECT: Low-Income Housing Credit/Partner's Distributive Share or Credit Shall Be Determined By Partnership Agreement

_____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended __________.

__X__ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

_____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended __________.

_____ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO __________________________.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 11, 2000, and AMENDED March 16 and May 2, 2000, STILL APPLIES.

__X__ OTHER - See comments below.

SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would specify that a partner's distributive share of the state low-income housing tax credit be determined by the partnership agreement.

This analysis does not address the bill's changes to the Insurance Tax Law, as those changes do not impact the department's programs and operations or state income tax revenue.

SUMMARY OF AMENDMENT

The August 7, 2000, amendments deleted the bill's former provisions allowing the state low-income housing credit to be transferred, sold, or assigned separately from the federal low-income housing credit. Instead, the amendment would accomplish the same goal by specifying that the partner's distributive share of the low-income housing credit would be allocated as provided in the partnership agreement, even if the allocation of the credit to the partner does not have substantial economic effect.

The August 7, 2000, amendment resolves the department's implementation concerns pertaining to the provisions that would permit the transfer, sale, or assignation of the low-income housing credit separately from the federal low-income housing credit.

Except for the changes discussed above, the addition of a policy consideration, and the new revenue estimate, the remainder of the department's analyses of the bill as amended March 16 and May 2, 2000, still applies. The Board position is restated.

Board Position:			Legislative Director	Date
_____ S	_____ NA	__X__ NP		
_____ SA	_____ O	_____ NAR	Johnnie Lou Rosas	8/25/00
_____ N	_____ OUA	_____ PENDING		

Policy Consideration

As amended, this bill allows a partner's distributive share of the state low-income housing credit to be allocated as provided in the partnership agreement, even if the allocation does not have substantial economic effect. Permitting allocation of the credit in this manner allows this credit to be severed from any economic interest each partner has in the profits and losses of the project. The concept of substantial economic effect was placed in federal law to prevent abusive allocations of tax benefits to certain partners at the expense of the remaining partners in a partnership. This bill would give opportunity for abuse by investors in low-income housing projects because it specifically permits partners to specify the allocation of the credit.

Tax Revenue Estimate

Based on data and assumptions discussed below, this bill would result in the losses stated below. It is projected that if partnerships are allowed to allocate low-income housing credits among partners (individual and corporate), the revenue impact would be:

Estimated Revenue Impact of AB 1903 As Amended August 7, 2000 Beginning After December 31, 2000 (In $Millions)			
	2000/2001	2001/2002	2002/2003
Revenue Impact	-$6	-$7	-$8

Estimates assume all credits generated in a given year would be applied to reduce tax liabilities. This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Tax Revenue Discussion

No tax return data regarding investments by partnerships specifically are available. Estimates for additional losses under this bill are orders of magnitude. It is assumed that prior year unapplied credits also would qualify. It is assumed that this change would result in a 15% increase in total applied credits. Allowance was made for credits that would have been used in later years under the current allocation method. In addition, it is projected that partners that do not have significant economic interest in the property and walk away from the investment after the credit is fully utilized, but have "basis" losses to apply against other positive income, would generate additional revenue losses under the proposal of $1 million annually beginning in 2004/2005.

BOARD POSITION

No position.

At its July 5, 2000, meeting, the Franchise Tax Board agreed to take no position on this bill.